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# ADMINISTRATION OF JUSTICE

## Mass and flagrant violations of human rights which constitute crimes against humanity and which took place during the colonial period, wars of conquest and slavery

### Note by the Secretary-General

1. At its fifty-second session in the year 2000, the Sub-Commission on the Promotion and Protection of Human Rights requested the Secretary-General to prepare a working document relating to the mass and flagrant violations of human rights which constitute crimes against humanity and which took place during the colonial period, wars of conquest and slavery, including means and proposals which could be adopted in order to provide reparation to the victims of those violations and to honour their memory (decision 2000/114). This note is submitted in response to the request of the Sub-Commission.

### Contemporary definition of crimes against humanity

2. Crimes against humanity were recognized in the Charter of the United Nations and Judgement of the Nürnberg Tribunal, as well as in Law No. 10 of the Control Council for Germany.[1]

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3. The Statute of the International Criminal Tribunal for the Former Yugoslavia, established in 1993, grants the International Tribunal jurisdiction over crimes against humanity (art. 5) when committed in armed conflict whether of international or internal character. The Statute of the International Criminal Tribunal for Rwanda (Security Council resolution 955 (1994)), while listing the same crimes under the category of crimes against humanity (art.3), is more open on this point.

4. The Rome Statute of the International Criminal Court (A/CONF.183/9), adopted in 1999, constitutes to date the most comprehensive definition of crimes against humanity.[2] The list of crimes against humanity in the Rome Statute substantially builds on the list formulated by the International Law Commission in article 18 of its 1996 Draft Code of Crimes against the Peace and Security of Mankind,[3] with the sole exception of "forced disappearance of persons".

**Issues of interest to the Sub-Commission**

5. The right of peoples to self-determination has been the subject of extensive standard-setting by the General Assembly and other organs of the United Nations. Mention may be made in this regard of the relevant provisions of the Charter of the United Nations, the Declaration on the Granting of Independence to Colonial Countries and Peoples, common article 1 of the International Covenants on Human Rights, and studies submitted to the Sub-Commission on the right to self-determination.

6. United Nations organs have also given extensive attention to the legal status of combatants struggling against colonial and alien domination and racist regimes, as well as to measures used to impede the realization of the right of peoples and nations to self-determination.

7. On these and related issues, the attention of the Sub-Commission is called to the publication, United Nations Action in the Field of Human Rights,[4] in particular chapter IV, section C, entitled "Rights of peoples and nations to self-determination".

8. The topic of crimes against humanity has been extensively considered by the International Law Commission[5] and in the process of drafting the Statute of the International Criminal Court.

9. The issue of reparation for the victims of violations of human rights is one that has been extensively discussed in the Sub-Commission and in the Commission on Human Rights and continues to engage the attention of the Commission. Reference may be made in this regard to decision 2001/105 adopted by the Commission on 23 April 2001 in which it requested the United Nations High Commissioner for Human Rights to hold a consultative meeting in Geneva for all interested Governments, international organizations and non-governmental organizations in consultative status with the Economic and Social Council with a view to finalizing the "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law" annexed to the final report of the independent expert (E/CN.4/2000/62) on the basis of the comments submitted, and to transmit to the Commission at its fifty-eighth session the final outcome of the consultative meeting for its consideration.

10. Paragraph 8 of the draft basic principles and guidelines defines victims as follows:

> "A person is a 'victim' where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person's fundamental legal rights. A 'victim' may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental or economic harm."

11. The topic of crimes against humanity that might have been committed in the past is currently the subject of debate in various forums, as is the issue of reparation for the victims of past violations.

12. It will be recalled that it was in the Sub-Commission that the basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law were first discussed. The Sub-Commission may wish to take note of the latest developments in the elaboration of the draft basic principles and guidelines and to consider whether, and how, the issue of historical violations and reparations therefor could be appropriately addressed in a manner that would help generate an international consensus on these matters.

## Notes

[1] Cited in the report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993) (S/25704 and Add.1 and Corr.1).

[2] Article 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

[3] Yearbook of the International Law Commission, 1996 vol. II, Part Two, chap II.

[4] United Nations publication, Sales No. E.94.XIV.11.

[5] Between 1988 and 1989 the International Law Commission contemplated the inclusion of colonial domination in its Draft Code of Crimes against Peace and Security of Mankind. See Yearbook of the International Law Commission 1988, vol. II, Part Two and ibid, 1989.

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